SUPREME COURT, U. S.

No. 729

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL UNION 3-3, AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY FOR PETITIONER

JOSEPH L. RAUH, JR.
JOHN SILARD
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Petitioner.

Of Counsel:
A. C. ROLL
318 Pacific Building
Roseburg, Oregon 97470

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In February of 1966 the enforcement decree was issued by the Court of Appeals below. Following two and a half years of repeated refusals by the Labor Board to secure compliance with that decree (see Petition, p. 7, n. 4), on July 2, 1968 petitioner filed its petition to intervene in the Court of Appeals. The Board's opposition thereto (see Petition, pp. 13A-14A) represented that the Board was then "conducting a very intensive investigation of the Company's books and records . . .", but rested its argument against intervention exclusively on the doctrine of *Amalgamated Utility Workers.* Now, many months later, the Board

states that it is still "continuing its investigation", and implies that the issue presented lacks finality (Opp., pp. 4, 6).

But with respect to the Union's principal aggrievement concerning post-reinstatement abolition by the employer of the strikers' seniority rights and protections, the Board concedes that it has finally decided there is "no basis for further [compliance] proceedings" (Opp., pp. 3-4, 10). Moreover, the present issue is not whether petitioner is right in its construction of the enforcement decree of the Court below, but whether it may be denied intervention and thus all opportunity for a ruling thereon. Surely the issue concerning the right to intervene is final in every sense.

And as concerns the Board's suggeston (Opp., p. 6) that upholding petitioner's right to intervene would "frustrate Congress's determination to create a specialized public agency as the primary administrator and enforcer of the federal labor laws . . . [because] the Board could thereby be compelled to institute a contempt action," this is surely a distortion of the right which petitioner asks this Court to uphold. To recognize that since 1947 the statute also protects private rights (as this Court found in *Scofield*), does not impugn the continuing role of the Board as primary enforcer of the statute. As we have emphasized (Petition, pp. 15-16), petitioner does not seek to file a contempt action but only to have the Court below resolve a critical issue of law, upon which the Board's present erroneous construction precludes the exercise of its compliance functions. The Board has no unreviewable power to issue an erroneous decision; no reason appears why it should nevertheless have unreviewable discretion to indulge an erroneous construction of its remedial order of striker reinstatement, particularly when that order has been incorporated in a judicial decree.

It is submitted that the important question presented is ripe for resolution and that the writ should be granted.

Respectfully submitted,

JOSEPH L. RAUH, JR.
JOHN SILARD
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Petitioner.

Of Counsel:

A. C. ROLL
Roseburg, Oregon 97470

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